

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies Concerning Multiple	)	
Ownership of Radio Broadcast Stations	)	MM Docket No. 01-317
in Local Markets	)	
	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Commission

**REPLY COMMENTS OF MBC GRAND BROADCASTING, INC.**

MBC Grand Broadcasting, Inc. (“MBC Grand”), through counsel, hereby submits these brief Reply Comments concerning some of the responses to the FCC’s *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* in the above-captioned proceedings, FCC 01-239, released November 9, 2001 (the “*NPRM*”).

As noted in its initial Comments in response to the *NPRM*, MBC Grand is the licensee of radio broadcast stations KNZZ(AM), KTMM (AM), KJOL(AM), KJYE(FM), KMOZ-FM, and KMGJ(FM), all licensed to Grand Junction, Colorado, which represents the maximum number of stations any single entity may own in the Grand Junction market under the local ownership rule mandated by Congress in the Telecommunications Act of 1996, P.L. 104-104, § 202(b), 110 Stat. 110. MBC Grand’s initial comments, filed March 22, 2002, emphasized the FCC’s lack of statutory authority to amend the local ownership rule in any way that imposes greater restrictions than those embodied in the limited rule adopted at Congress’s direction.

The principal point of these Reply Comments is to emphasize that, among the parties who in their initial comments expressed support for an outcome which would create limitations on local ownership beyond those already incorporated in the rules, none offers a persuasive argument why the FCC possesses authority to adopt a local ownership rule more restrictive than the rule mandated by Congress. Some, e.g., North American Broadcasting Company, Inc., Idaho Wireless Corporation, and Dick Broadcasting Company, advocate a more restrictive rule without even addressing the implication of the Congressional directive in Section 202(b) of the 1996 Act. Others (National Association of Black-Owned Broadcasters, *Comments*, pp. 12-14; American Women in Radio and Television, *Comments*, pp. 5-6; American Federation of Television and Radio Artists, *Comments*, p. 4; Office of Telecommunications, Inc., of the United Church of Christ, *Comments*, pp. 24-26), assert the existence of statutory authority, resting solely on the “public interest” standard of Sections 309(a) and 310 of the Communications Act, but without discussing, or mentioning only in passing, the recent decision of the U. S. Court of Appeals for the District of Columbia Circuit, in *Fox Television Stations, Inc. v. FCC*, 280 F. 3d 1027 (D.C. Cir. 2002). In *Fox Television Stations*, the Court of Appeals, reviewing FCC refusals to further relax a rule that, like the radio local ownership rule, was mandated by Congress in the 1996 Act, Section 202(b), held that the rule was a benchmark from which the FCC might act only to repeal the rule entirely or further limit its application. From the Court’s ruling in *Fox Television Stations*, therefore, it follows that the FCC cannot retreat from the baseline Congress has established and adopt new rules or procedures which increase restrictions on local radio ownership.

The more informed reading of the FCC’s statutory authority is found in the comments of the National Association of Broadcasters (“NAB”), particularly that portion of NAB’s Comments (pp.

7-11) that illustrates, convincingly and at length, the rule of construction that specific provisions in a statute are not overridden by general grants of authority or savings clauses.

A proper reading of the FCC's statutory authority – or, in the present case, its *lack* of authority to adopt a more restrictive rule – should be the end of the matter. Assuming, *arguendo*, that the FCC was free to adopt a more restrictive rule, the comments show no reason why it should do so. For every argument that large groups are inimical to “diversity,” there is ample anecdotal evidence that the creation of station groups permitted by the 1996 Act promotes diversity. E.g., Radio One, Inc., *Comments*, p. 9 (Radio One has acquired under-performing stations to meet the needs of market segments that were not being served adequately, if at all); Hispanic Broadcasting Corp., *Comments*, pp. 10-12. In the Grand Junction market, MBC Grand acquired KJOL(AM), in May 2001. Prior to this transaction, the station existed solely to rebroadcast the programming of a commonly-owned FM station and contributed nothing to diversity in the market. Its acquisition by MBC Grand permitted restoration (via a local marketing agreement) of programming that had been lost to the community as the result of the earlier change of ownership of a noncommercial educational FM station. For each licensee who complains about the difficulty of competing against a multiple-station group, there is another who recognizes that adopting a more restrictive rule, after six years of industry consolidation, would only cast existing competitive balances in concrete, to the detriment of local station owners who seek only the opportunity to build stronger, more competitive combinations of their own. E.g., Blakeney Communications, *Comments*, p. 2 (smaller owners must have the opportunity to grow to compete); Radio One, Inc., *Comments*, p. 6 (tightening rules would inhibit growth of minority-owned station groups; Mapleton Communications LLC, *Comments*, pp. 2-3 (FCC should not impose undue restraints on new entrants). The fact is that application of a more

restrictive rule, whether cast as a “presumption” or a “bright-line” rule, could have prevented MBC Grand from growing from an AM-FM combination to a group of three AM and three FM stations able to compete effectively with the five-station group (four FM stations and one AM station) owned by Cumulus Broadcasting in the Grand Junction market. In such a scenario, MBC Grand, and every other licensee in the Grand Junction market, would have been perpetually condemned to second-class status, potentially at the mercy of predatory anti-competitive tactics of a dominant local station group.

The alternatives suggested in the *NPRM* for imposing more restrictive limits, or strengthening the FCC’s ability to interfere with transactions that conform with the rules Congress directed the FCC to adopt, are, therefore, both beyond the FCC’s authority and not in the public interest. Should the FCC, notwithstanding, choose to attempt to implement a more restrictive regulatory scheme, it should resist any nihilistic impulse to try to tear down existing local station groups that conform to the rule Congress directed the FCC to adopt, and were acquired in good faith reliance on Congress’s intentions in requiring the FCC to enact that rule. NAB persuasively makes the case that the FCC’s own precedent requires the grandfathering of existing combinations, including transfers of stations that are currently part of a local ownership group. *NAB Comments*, pp. 49-51. The operations of MBC Grand’s six stations, five of which were acquired at different times from three different owners, are now consolidated under a single roof; it would be impossible to realize the full market value of any of these stations, or even in some cases the amount of MBC Grand’s investment, if one or more was required to be sold without its own free-standing studio and equipment.

For the reasons set forth herein, and in MBC Grand's initial comments, the FCC should recognize that its proposed revisions to the local ownership rule are fatally flawed and, if adopted, would harm rather than advance the public interest. It should terminate this proceeding, promptly, and with it the "interim policy" by which it purports to resolve applications that are otherwise in complete conformity with the local ownership rules as mandated by Congress.

Respectfully submitted,

MBC GRAND BROADCASTING, INC.

By /s/ J. Geoffrey Bentley  
J. Geoffrey Bentley

BENTLEY LAW OFFICE  
P.O. Box 710207  
Herndon, VA 20171  
(703)793-5207  
(703)793-4978(facsimile)

Its Attorney

May 8, 2002

## **CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing Reply Comments of MBC Grand Broadcasting, Inc., to be deposited in the United States mail, postage pre-paid, and mailed, this 8<sup>th</sup> day of May 2002, to the following persons:

James L. Winston, Esq.  
Rubin, Winston, Diercks, Harris & Cooke, L.L.P.  
1155 Connecticut Ave., N.W., Suite 600  
Washington, D.C. 20036  
Counsel for National Association of Black-Owned Broadcasters

Larry Blakeney  
Blakeney Communications  
P.O. Box 6408  
Laurel, MS 39441

Barry D. Umansky  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
Counsel for North American Broadcasting Company, Inc.,  
Idaho Wireless Corporation, and Dick Broadcasting Company

Christopher G. Wood  
Fleischmann & Walsh, LLP  
1400 Sixteenth Street, N.W.  
Washington, D.C. 20036  
Counsel for Mapleton Communications, LLC

Thomas R. Carpenter  
AFTRA  
260 Madison Ave., Seventh Floor  
New York, NY 10016

Roy R. Russo  
Cohn & Marks, LLP  
1920 N Street, N.W., Suite 300  
Washington, D.C. 20036  
Counsel for Hispanic Broadcasting Corp.

Eve J. Klindera  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
Counsel for Radio One, Inc.

Jerrienne Timmerman  
National Association of Broadcasters  
1771 N Street, N.W.  
Washington, D.C. 20036

Christopher R. Day  
Institute for Public Representation  
Georgetown University School of Law  
600 New Jersey Ave., N.W., Suite 312  
Washington, D.C. 20001  
Counsel to Office of Communication, Inc., the  
United Church of Christ

/s/ J. Geoffrey Bentley

J. Geoffrey Bentley